



August 4, 2022

Board of County Commissioners  
 Clackamas County

**Approval of an Intergovernmental Agreement between Water Environment Services and City of Gladstone for Maintenance of the 82<sup>nd</sup> Drive Pump Station. Funds reimbursed to WES Sanitary Sewer Operating Funds. County General Fund are not involved.**

<b>Purpose/Outcome</b>	Approval of an Intergovernmental Agreement between Water Environment Services and City of Gladstone for Maintenance of the 82 <sup>nd</sup> Drive Pump Station. Funds reimbursed to WES Sanitary Sewer Operating Funds. County General Fund are not involved.
<b>Dollar Amount and Fiscal Impact</b>	The City agrees to reimburse WES for the cost of work performed in accordance with the Agreement based on quarterly invoices sent to the City by WES.
<b>Funding Source</b>	Funds reimbursed to WES Sanitary Sewer Operating Funds. County General Funds are not involved.
<b>Duration</b>	The Agreement ends June 30, 2032.
<b>Previous Board Action/Review</b>	This item was presented at Issues on August 2, 2022.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan to provide Enterprise Resiliency, and Performance and Operational Optimization by supporting the City of Gladstone with pump station operation and maintenance.</li> <li>2. This project supports the County Strategic Plan to build public trust through good government by realizing cost savings.</li> </ol>
<b>Counsel Review</b>	<p>Date of Counsel review: July 12, 2022.</p> <p>Name of County Counsel performing review: Amanda Keller.</p>
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>1. Was this project processed through Procurement? No.</li> <li>2. IGAs are not considered public contracts for procurement purposes, so they are not required to go through Procurement.</li> </ol>
<b>Contact Person</b>	Greg Geist, WES Director, 503-742-4560
<b>Contract No.</b>	N/A

**BACKGROUND:**

The City of Gladstone (“City”) installed the 82<sup>nd</sup> Drive Pump Station (“Pump Station”) in the late 1970’s. While the City is the owner of the Pump Station, Water Environment Services (“WES”) has assisted the City with the performance of routine maintenance and operation of the Pump Station over the past several decades.

WES owns and operates approximately 20 pump stations within their own sanitary sewer collection system. WES staff are trained and fully equipped to operate and maintain pump stations, and is especially familiar with this Pump Station after providing assistance with

maintenance to the City for many years. Given the number of pump stations WES currently operates and maintains, economies of scale allow WES to provide this support to the City at a reasonable cost.

This IGA documents and outlines the roles and responsibilities of both the City and WES, as well as reimbursement terms for WES to continue their support of the City. WES is agreeing to assist with regular maintenance, but the City will maintain responsibility for any upgrades or significant repairs.

**RECOMMENDATION:**

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement between Water Environment Services and City of Gladstone for Maintenance of the 82<sup>nd</sup> Drive Pump Station.

Respectfully submitted,



Ron Wierenga  
Assistant Director  
Water Environment Services

Attachments: Intergovernmental Agreement between Water Environment Services and the City of Gladstone for Maintenance of the 82<sup>nd</sup> Drive Pump Station.

# COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to \_\_\_\_\_
- Other \_\_\_\_\_

Originating County Department: \_\_\_\_\_

Other party to contract/agreement: \_\_\_\_\_

Description:

After recording please return to: \_\_\_\_\_

County Admin

Procurement

If applicable, complete the following:

\_\_\_\_\_

Board Agenda Date/Item Number: \_\_\_\_\_

## INTERGOVERNMENTAL AGREEMENT BETWEEN WATER ENVIRONMENT SERVICES AND THE CITY OF GLADSTONE FOR MAINTENANCE OF THE 82<sup>nd</sup> DRIVE PUMP STATION

THIS AGREEMENT (this "Agreement") is entered into and between Water Environment Services ("District"), an intergovernmental entity formed pursuant to Oregon Revised Statutes Chapter 190, and the City of Gladstone ("City"), a political subdivision of State of Oregon, collectively referred to as the "Parties" and each a "Party."

### RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The 82<sup>nd</sup> Drive Pump Station was installed by the City in the late 1970's, identified more specifically in Exhibit A ("Pump Station"). While the City is the owner of the Pump Station, the District has assisted the City with performance of routine maintenance and operation of the Pump Station over the past several decades.

This Agreement is intended to document the responsibilities of the Parties as it relates to the ongoing responsibilities for routine maintenance and operation of the Pump Station.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2032, whichever is sooner. The Parties may agree to extend this Agreement for an additional five year term upon a writing signed by both Parties.
2. **Obligations of the District.** The District agrees to do the following:
  - A. Maintain the Pump Station as a part of District's Supervisory Control and Data Acquisition ("SCADA") monitoring system and respond to callouts at the Pump Station. If there is a power loss at the Pump Station and the City has not yet installed permanent backup power, District will utilize best efforts to provide a backup generator to maintain operation.
  - B. Perform weekly site visits to the Pump Station to conduct the following tasks:
    - i. Visual inspection for normal operation.
    - ii. Check pump run time reading, record run time readings and compare against previous week's readings.
  - C. On a monthly basis, check that alarm floats and telemetry are functional, and clean the wet well as needed.
  - D. Routine replacement of minor parts such as oil, floats, gaskets, and switches. All other part replacements and upgrades are the responsibility of the City.

- E. Maintain the access road to the Pump Station (i.e. bring in crushed rock, keep road clear, etc.).
- F. As soon as reasonably possible, notify the City of any unusual or unforeseen circumstances that will cause the costs for work performed by District under this Agreement to exceed the typical costs incurred for such work. In such situations, the Parties will jointly determine the most cost-effective way to address such unusual or unforeseen circumstances.
- G. Provide on-call services upon request by the City and agreement by the District. The District may submit an invoice for services rendered pursuant to this provision upon completion of the work.

**3. Obligations of the City.** The City agrees to the following:

- A. The Parties agree that the Pump Station is in need of rehabilitation in order to maintain functionality and is considered essential to the District agreeing to perform maintenance on the Pump Station into the future. Currently, the Parties have an intergovernmental agreement for District to assist the City with performance of the rehabilitation work ("Rehab IGA"). If the City exercises its discretion in the Rehab IGA to cancel or not perform the rehabilitation work on the Pump Station, then the District may terminate this IGA upon thirty (30) days' notice to the City.
  - B. The City will ensure the Pump Station has adequate access to electricity, including but not limited to, maintaining direct power from PGE, paying electricity bills, and making any necessary repairs to ensure ongoing electricity required by this section.
  - C. The City will maintain responsibility for necessary upgrades to the Pump Station so that it remains functional.
  - D. The City will reimburse District for reasonable maintenance costs incurred by WES pursuant to Section 2(A) above.
  - E. The City will provide District prior notice if City intends to perform any work on the Pump Station that may affect District's ability to perform its obligations under this Agreement. The District is not responsible for any claims or expenses that result from the District's inability to access the Pump Station or failure of the Pump Station to operate correctly.
  - F. As owner of the Pump Station, accept responsibility for all other tasks or obligations associated with the Pump Station not specifically agreed to above by the District.
  - G. The City is responsible for compliance with all legal and regulatory requirements associated with the Pump Station.
- 4. Payment.** Unless otherwise specified, the District shall submit quarterly invoices for work performed in accordance with this Agreement. Invoices shall describe all work performed for which reimbursement is claimed. Payments shall be made to District following the City's review and approval of invoices submitted by District, but in any event undisputed charges will be paid within 30 days of receipt of the invoice. The District shall charge its standard full rate on a time and materials basis, subject to any limitations in this Agreement.

**5. Representations and Warranties.**

- A. *City Representations and Warranties:* City represents and warrants to District that City has the power and authority to enter into and perform this Agreement, and this

Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.

- B. *District Representations and Warranties*: District represents and warrants to City that District has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of District enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## 6. Termination.

- A. Either the District or the City may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the District or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The District or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event the that Party fails to receive expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the Party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

- 7. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon regulatory violations as well as damages or injuries to persons or property caused by the negligent or willful acts or omissions of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control related to work performed under this Agreement. Notwithstanding the above, the

District shall not be responsible for indemnifying the City against any claims or fines of any nature arising from a lack of compliance with the Clean Water Act, Oregon Revised Statutes, or any other state or federal legal or regulatory requirements, unless and to the extent caused by the negligent or willful acts or omissions of District or its officers, elected officials, employees, agents, or its subcontractors or anyone over which the District has a right to control related to work performed under this Agreement.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the District, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon regulatory violations as well as damages or injuries to persons or property caused by the negligent or willful acts or omissions of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control for related to work performed under this Agreement.

8. **Insurance.** Each Party agrees to furnish the other Party with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the other Party and, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, the Party shall provide documentation to the other Party of the Party's self-insured status by completing the Self-Insurance Certification form provided by the other Party.
  
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
  - A. District Field Operations Supervisor or their designee will act as liaison for the District.

**Contact Information:**

Water Environment Services  
15941 S Agnes Ave  
Oregon City, OR 97045  
Phone: 503-557-2802  
Email: kbean@clackamas.us

Darren Caniparoli or their designee will act as liaison for the City.

**Contact Information:**

City of Gladstone Public Works  
18595 Portland Ave.  
Gladstone, OR 97027  
Phone: 503-656-7957  
Email: caniparoli@ci.gladstone.or.us

**10. General Provisions.**

- A. Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of the District, without giving effect to the conflict of law provisions thereof. Any claim between District and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Both Parties, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Both Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Both Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, each Party shall



permit the other Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

**E. Work Product. Reserved.**

**F. Hazard Communication.** Each Party shall notify the other Party prior to using products containing hazardous chemicals to which the other Party's employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon District's request, City shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**G. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

**H. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

**I. Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

**J. Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**K. Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to

create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** City and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Neither Party shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in the other Party's sole discretion. A Party's consent to any subcontract or assignment shall not relieve the other Party of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (S), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** City agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither City nor District shall be held responsible for delay or default caused by events outside of the City or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, City shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Reserved.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Water Environment Services**

**City of Gladstone**

\_\_\_\_\_  
Chair

  
\_\_\_\_\_

\_\_\_\_\_  
Date

9/14/22  
\_\_\_\_\_

**Exhibit A**  
**Pump Station Map**

### Exhibit A – Pump Station Map

The 82<sup>nd</sup> Drive Pump Station is located just northeast of the I205N Exit 11 off ramp to 82<sup>nd</sup> Drive. It is located within ODOT ROW accessible by a dirt road from the unnamed access street to Edgewater Road.

